

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5309

Chapter 262, Laws of 2005

59th Legislature
2005 Regular Session

SEXUAL MISCONDUCT WITH A MINOR

EFFECTIVE DATE: 7/24/05

Passed by the Senate March 9, 2005
YEAS 44 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 14, 2005
YEAS 94 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 4, 2005.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5309** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 4, 2005 - 3:12 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5309

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Benton and Kline)

READ FIRST TIME 02/15/05.

1 AN ACT Relating to sexual misconduct with a minor; and amending RCW
2 9A.44.010, 9A.44.093, and 9A.44.096.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 9A.44.010 and 2001 c 251 s 28 are each amended to read
5 as follows:

6 As used in this chapter:

7 (1) "Sexual intercourse" (a) has its ordinary meaning and occurs
8 upon any penetration, however slight, and

9 (b) Also means any penetration of the vagina or anus however
10 slight, by an object, when committed on one person by another, whether
11 such persons are of the same or opposite sex, except when such
12 penetration is accomplished for medically recognized treatment or
13 diagnostic purposes, and

14 (c) Also means any act of sexual contact between persons involving
15 the sex organs of one person and the mouth or anus of another whether
16 such persons are of the same or opposite sex.

17 (2) "Sexual contact" means any touching of the sexual or other
18 intimate parts of a person done for the purpose of gratifying sexual
19 desire of either party or a third party.

1 (3) "Married" means one who is legally married to another, but does
2 not include a person who is living separate and apart from his or her
3 spouse and who has filed in an appropriate court for legal separation
4 or for dissolution of his or her marriage.

5 (4) "Mental incapacity" is that condition existing at the time of
6 the offense which prevents a person from understanding the nature or
7 consequences of the act of sexual intercourse whether that condition is
8 produced by illness, defect, the influence of a substance or from some
9 other cause.

10 (5) "Physically helpless" means a person who is unconscious or for
11 any other reason is physically unable to communicate unwillingness to
12 an act.

13 (6) "Forcible compulsion" means physical force which overcomes
14 resistance, or a threat, express or implied, that places a person in
15 fear of death or physical injury to herself or himself or another
16 person, or in fear that she or he or another person will be kidnapped.

17 (7) "Consent" means that at the time of the act of sexual
18 intercourse or sexual contact there are actual words or conduct
19 indicating freely given agreement to have sexual intercourse or sexual
20 contact.

21 (8) "Significant relationship" means a situation in which the
22 perpetrator is:

23 (a) A person who undertakes the responsibility, professionally or
24 voluntarily, to provide education, health, welfare, or organized
25 recreational activities principally for minors;

26 (b) A person who in the course of his or her employment supervises
27 minors; or

28 (c) A person who provides welfare, health or residential
29 assistance, personal care, or organized recreational activities to
30 frail elders or vulnerable adults, including a provider, employee,
31 temporary employee, volunteer, or independent contractor who supplies
32 services to long-term care facilities licensed or required to be
33 licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home
34 health, hospice, or home care agencies licensed or required to be
35 licensed under chapter 70.127 RCW, but not including a consensual
36 sexual partner.

37 (9) "Abuse of a supervisory position" means:

1 (a) To use a direct or indirect threat or promise to ((use))
2 exercise authority to the detriment or benefit of a minor; or

3 (b) To exploit a significant relationship in order to obtain the
4 consent of a minor.

5 (10) "Developmentally disabled," for purposes of RCW
6 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a
7 developmental disability as defined in RCW 71A.10.020.

8 (11) "Person with supervisory authority," for purposes of RCW
9 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any
10 proprietor or employee of any public or private care or treatment
11 facility who directly supervises developmentally disabled, mentally
12 disordered, or chemically dependent persons at the facility.

13 (12) "Mentally disordered person" for the purposes of RCW
14 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental
15 disorder" as defined in RCW 71.05.020.

16 (13) "Chemically dependent person" for purposes of RCW
17 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically
18 dependent" as defined in RCW 70.96A.020(4).

19 (14) "Health care provider" for purposes of RCW 9A.44.050 and
20 9A.44.100 means a person who is, holds himself or herself out to be, or
21 provides services as if he or she were: (a) A member of a health care
22 profession under chapter 18.130 RCW; or (b) registered under chapter
23 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether
24 the health care provider is licensed, certified, or registered by the
25 state.

26 (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means
27 the active delivery of professional services by a health care provider
28 which the health care provider holds himself or herself out to be
29 qualified to provide.

30 (16) "Frail elder or vulnerable adult" means a person sixty years
31 of age or older who has the functional, mental, or physical inability
32 to care for himself or herself. "Frail elder or vulnerable adult" also
33 includes a person found incapacitated under chapter 11.88 RCW, a person
34 over eighteen years of age who has a developmental disability under
35 chapter 71A.10 RCW, a person admitted to a long-term care facility that
36 is licensed or required to be licensed under chapter 18.20, 18.51,
37 72.36, or 70.128 RCW, and a person receiving services from a home

1 health, hospice, or home care agency licensed or required to be
2 licensed under chapter 70.127 RCW.

3 **Sec. 2.** RCW 9A.44.093 and 2001 2nd sp.s. c 12 s 357 are each
4 amended to read as follows:

5 (1) A person is guilty of sexual misconduct with a minor in the
6 first degree when: (a) The person has, or knowingly causes another
7 person under the age of eighteen to have, sexual intercourse with
8 another person who is at least sixteen years old but less than eighteen
9 years old and not married to the perpetrator, if the perpetrator is at
10 least sixty months older than the victim, is in a significant
11 relationship to the victim, and abuses a supervisory position within
12 that relationship in order to engage in or cause another person under
13 the age of eighteen to engage in sexual intercourse with the victim;
14 ~~((or))~~ (b) the person is a school employee who has, or knowingly causes
15 another person under the age of eighteen to have, sexual intercourse
16 with a registered student of the school who is at least sixteen years
17 old and not married to the employee, if the employee is at least sixty
18 months older than the student; or (c) the person is a foster parent who
19 has, or knowingly causes another person under the age of eighteen to
20 have, sexual intercourse with his or her foster child who is at least
21 sixteen.

22 (2) Sexual misconduct with a minor in the first degree is a class
23 C felony.

24 (3) For the purposes of this section, "school employee" means an
25 employee of a common school defined in RCW 28A.150.020, or a grade
26 kindergarten through twelve employee of a private school under chapter
27 28A.195 RCW, who is not enrolled as a student of the common school or
28 private school.

29 **Sec. 3.** RCW 9A.44.096 and 2001 2nd sp.s. c 12 s 358 are each
30 amended to read as follows:

31 (1) A person is guilty of sexual misconduct with a minor in the
32 second degree when: (a) The person has, or knowingly causes another
33 person under the age of eighteen to have, sexual contact with another
34 person who is at least sixteen years old but less than eighteen years
35 old and not married to the perpetrator, if the perpetrator is at least
36 sixty months older than the victim, is in a significant relationship to

1 the victim, and abuses a supervisory position within that relationship
2 in order to engage in or cause another person under the age of eighteen
3 to engage in sexual contact with the victim; ~~((or))~~ (b) the person is
4 a school employee who has, or knowingly causes another person under the
5 age of eighteen to have, sexual contact with a registered student of
6 the school who is at least sixteen years old and not married to the
7 employee, if the employee is at least sixty months older than the
8 student; or (c) the person is a foster parent who has, or knowingly
9 causes another person under the age of eighteen to have, sexual contact
10 with his or her foster child who is at least sixteen.

11 (2) Sexual misconduct with a minor in the second degree is a gross
12 misdemeanor.

13 (3) For the purposes of this section, "school employee" means an
14 employee of a common school defined in RCW 28A.150.020, or a grade
15 kindergarten through twelve employee of a private school under chapter
16 28A.195 RCW, who is not enrolled as a student of the common school or
17 private school.

Passed by the Senate March 9, 2005.

Passed by the House April 14, 2005.

Approved by the Governor May 4, 2005.

Filed in Office of Secretary of State May 4, 2005.